

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL TPS ALLIANCE, et al.,

Plaintiffs,

v.

KRISTI NOEM, et al.,

Defendants.

Case No. 25-cv-01766-EMC

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO PRESERVE**

Docket No. 144

Currently pending before the Court is Plaintiffs' motion to preserve status and rights pursuant to 5 U.S.C. § 705. Having considered the parties' briefs, as well as the oral argument of counsel, the Court hereby **GRANTS** in part and **DENIES** in part Plaintiffs' motion.

I. BACKGROUND

On January 17, 2025, Secretary Mayorkas (part of the Biden administration) extended the 2023 TPS Designation for Venezuela from April 2, 2025, to October 2, 2026.

On February 3, 2025, Secretary Noem (part of the Trump administration) vacated the extension.

On February 5, 2025, Secretary Noem terminated the 2023 TPS Designation for Venezuela. Assuming her vacatur of the prior extension was effective, the earliest date the Secretary was allowed to terminate the designation under the TPS statute, 8 U.S.C. § 1254a, was April 7, 2025, *i.e.*, 60 days after publication of the notice of termination. *See* 8 U.S.C. § 1254a(b)(3)(B) ("If the [Secretary] determines . . . that a foreign state . . . no longer continues to meet the conditions for designation . . . , [she] shall terminate the designation by publishing notice in the Federal Register Such termination is effective in accordance with subsection (d)(3), but

1 shall not be effective earlier than 60 days after the date the notice is published”). The
 2 Secretary’s ability to terminate as of April 7, 2025, was predicated on her vacatur of the extension
 3 given by Secretary Mayorkas.

4 On March 31, 2025, this Court granted Plaintiffs’ motion to postpone agency action – the
 5 postponement under 5 U.S.C. § 705 (part of the APA) applied to both Secretary Noem’s vacatur
 6 decision and her termination decision.

7 On May 19, 2025, the Supreme Court issued its order staying this Court’s postponement
 8 order. The second paragraph of the Supreme Court order states as follows:

9 This order is without prejudice to any challenge to Secretary Noem’s
 10 February 3, 2025 vacatur notice insofar as it purports to invalidate
 11 EADs [employment authorization documents], Forms I-797, Notices
 of Action, and Forms I-94 issued with October 2, 2026 expiration
 dates. *See* 8 U.S.C. § 1254a(d)(3).

12 The order identified Secretary Noem’s vacatur decision because that decision purported to
 13 invalidate such TPS-related documents:

14 Pursuant to this vacatur, USCIS will no longer accept Venezuela
 15 TPS re-registration applications (Form I-821) and associated
 16 Applications for Employment Authorization (Form I-765) filed
 17 under the Mayorkas Notice [of January 17, 2025]. For TPS
 18 beneficiaries who have already filed applications to re-register for
 TPS pursuant to the Mayorkas Notice and paid any fees associated
 with their applications, USCIS will cease processing their
 applications, and issue refunds of any fees paid by those aliens.
 19 **Additionally, USCIS will invalidate EADs; Forms I-797, Notice
 of Action (Approval Notice); and Forms I-94, Arrival/Departure
 Record (collectively known as TPS-related documentation) that
 20 have been issued with October 2, 2026 expiration dates under
 the Mayorkas Notice.** USCIS will provide refunds to any fees paid
 21 by these aliens as well.

22 Additionally, pursuant to this vacatur the automatic EAD extensions
 23 provided in the Mayorkas Notice are hereby rescinded. USCIS will
 provide additional guidance regarding the two Venezuela TPS
 designations on a future date in accordance with applicable laws.

24 90 Fed. Reg. 8805 (emphasis added).

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II. DISCUSSION

Plaintiffs now ask this Court for relief based on the second paragraph of the Supreme Court's order.¹ Specifically, they ask that the Court recognize the continuing validity of TPS-related documentation issued pursuant to the extension given by Secretary Mayorkas in January 2025 (which extended legal status and employment authorization to October 2, 2026) in order to preserve the status and rights of Venezuelan TPS holders who received such documents. *See* Mot. at 3. Plaintiffs predicate their challenge on 5 U.S.C. § 705 (part of the APA) which states as follows:

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action **or to preserve status or rights** pending conclusion of the review proceedings.

5 U.S.C. § 705 (emphasis added).

The factors that a court considers when a party seeks relief under § 705 overlap with the factors for a preliminary injunction. *See* Docket No. 93 (Order at 30-31). That is, a court considers whether the party seeking relief is likely to succeed on the merits, whether that party would likely suffer irreparable harm in the absence of relief, whether the balance of equities tips in the favor of that party, and whether issuing that party relief would be in the public interest. *See* Docket No. 93 (Order at 31) (adding that there is a sliding scale where relief may be given if the

¹ Neither party suggested in its papers that the pending Ninth Circuit appeal divests this Court of jurisdiction to consider Plaintiffs' pending motion. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (stating that the filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal"). The Court also independently concludes that it has not been divested of jurisdiction with respect to Plaintiffs' motion. To be sure, Plaintiffs seek relief for a "subset" of the Venezuelan TPS holders for whom they sought relief in their motion to postpone (now the subject of the Ninth Circuit appeal). But the issues raised in the motion to preserve are distinct and separate from those raised in the motion to postpone. The core issue presented here in the motion to preserve, pertaining to the rights of a discrete group of documents holders, is not currently at issue in that pending appeal. Even if the parties and the Court were incorrect, the Court could still issue an indicative ruling for the Ninth Circuit. *See* Fed. R. Civ. P. 62.1. It does so here in the alternative.

1 party seeking relief shows that there are serious questions on the merits and that the balance of
2 hardships tips sharply in its favor).

3 A. Likelihood of Success on the Merits

4 According to Plaintiffs, they are likely to succeed on the merits for the subset of
5 Venezuelan TPS holders who hold documents invalidated by Secretary Noem's vacatur decision
6 for two reasons: (1) Secretary Noem exceeded her statutory authority in invalidating the
7 documents, and (2) Secretary Noem acted arbitrarily and capriciously in invalidating the same.
8 The Court largely agrees.

9 1. Exceeding Statutory Authority

10 According to Plaintiffs, Secretary Noem exceeded her statutory authority when she
11 effectively canceled, on February 3, 2025, TPS-related documentation that had already been
12 issued based on the extension to October 2, 2026. Plaintiffs' position is meritorious. Nothing in
13 the TPS statute allows the Secretary to take such action. In fact, § 1254a(d)(3), the provision in
14 the TPS statute cited by the Supreme Court in its stay order, underscores that such action is not
15 permissible because the provision recognizes that TPS holders have reliance interests when issued
16 TPS-related documentation. Section 1254a(d)(3) (titled "Effective date of terminations") states:

17 If the Attorney General terminates the designation of a foreign state
18 (or part of such foreign state) under subsection (b)(3)(B), such
19 termination shall only apply to documentation and authorization
20 issued or renewed **after** the effective date of the publication of
21 notice of the determination under that subsection (or, at the Attorney
General's option, after such period after the effective date of the
determination as the Attorney General determines to be appropriate
in order to provide for an orderly transition).

22 8 U.S.C. § 1254a(d)(3) (emphasis added).² When Secretary Noem issued the vacatur decision on
23 February 3, there had been no publication of the notice of determination terminating the 2023 TPS
24 Designation for Venezuela. That notice was not published until February 5, 2025.

25 In response, the government argues that § 1254a(d)(3) is not applicable because §

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27 ² See also 8 U.S.C. § 1254a(d)(1) ("Upon the granting of temporary protected status to an alien
28 under this section, the Attorney General shall provide for the issuance of such temporary
documentation and authorization as may be necessary to carry out the purposes of this section.").

1 1254a(d)(3) is about *terminations* and Secretary Noem invalidated the TPS-related documentation
 2 in conjunction with her decision to *vacate*. There are several problems with this argument. First,
 3 the government exalts form over substance; though contained in a vacatur notice, the notice
 4 expressly purports to invalidate TPS documents issued pursuant to the Mayorkas extension. That
 5 is why the Supreme Court cited the vacatur decision. As Plaintiffs assert, there is “no reason why
 6 Congress would expressly prohibit the agency from retroactively invalidating already issued
 7 documents in the context of a termination, but not a vacatur.” Reply at 2. Moreover, even if §
 8 1254a(d)(3) is not technically applicable, it is highly relevant given the Supreme Court’s stay
 9 order cited the provision.³ As stated above, the provision at the very least underscores the
 10 importance of reliance interests that must be recognized here. The government effectively asks
 11 this Court to disregard the plain language of the Supreme Court’s order.

12 In its papers, the government suggests that, at best, the relevant provision in the TPS
 13 statute is § 1254a(d)(2) and not (3). But § 1254a(d)(2) explicitly says, “[s]ubject to paragraph
 14 [(d)](3).” See 8 U.S.C. § 1254a(d)(2) (“Subject to paragraph (3), such documentation shall be
 15 valid during the initial period of designation of the foreign state (or part thereof) involved and any
 16 extension of such period.”). Because § 1254a(d)(2) incorporates § 1254a(d)(3), the government
 17 cannot avoid the impact of § 1254a(d)(3). And again, the Supreme Court’s order makes explicit
 18 reference to Section 1254a(d)(3).

19 The government also makes a passing argument that the Mayorkas extension never went
 20 into effect, thus freeing Secretary Noem from having to terminate TPS status as a condition to
 21 invalidating TPS-related documents issued under the Mayorkas extension. This argument seems
 22 to be based on the language in the Federal Register for the Mayorkas extension. See 90 Fed. Reg.
 23 5961 (Jan. 17, 2025) (“On the basis of this determination, I am extending the existing October 3,
 24 2023 designation of Venezuela for TPS for 18 months, *beginning* on April 3, 2025, and ending on
 25 October 2, 2026. See INA sec. 244(b)(1) and (b)(2); 8 U.S.C. 1254a(b)(1), and (b)(2).”) (emphasis
 26 added). However, the government’s position is not convincing, especially as it has conceded that
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28 ³ The Supreme Court’s stay order also indicates that there is room for at least some judicial review of agency action, which cuts against the government’s jurisdictional arguments.

1 TPS-related documentation *was* in fact issued based on the October 2, 2026, date. The extension
2 had real world consequences: it was effective, even if only for a brief period of time.

3 Accordingly, Secretary’s Noem’s purported immediate invalidation on February 3 of TPS-
4 related documents issued pursuant to the Mayorkas extension exceeded her statutory authority.

5 2. Arbitrary and Capricious

6 Plaintiffs also argue a likelihood of success on the merits on the basis that the Secretary’s
7 vacatur decision was arbitrary and capricious under the APA. This argument is similar to that
8 above. Specifically, Plaintiffs assert that, once any Venezuelan TPS holder *was* issued TPS-
9 related documentation (*e.g.*, an EAD, I-797, I-94) based on the October 2, 2026, extension date,
10 they had a protectible reliance interest or vested right, and thus the Secretary’s invalidation of such
11 was arbitrary and capricious. As above, Plaintiffs’ argument has merit – at the very least presents
12 serious questions on the merits. *See DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020)
13 (holding DHS Secretary’s decision to end DACA program was arbitrary and capricious because,
14 *inter alia*, she “failed to address whether there was ‘legitimate reliance’ on the DACA
15 Memorandum”); *cf. Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1122 (N.D. Cal. 2018) (in evaluating
16 plaintiffs’ due process claim, stating that “Plaintiffs arguably have a property interest in loss of
17 TPS status”); *Saget v. Trump*, 375 F. Supp. 3d 280, 333 (E.D.N.Y. 2019) (in holding that there
18 was judicial review in a TPS case, stating that “[p]rotecting liberty interests such as those
19 associated with TPS is vital to the property functioning of the rule of law”); *Nasor v. USCIS*, 685
20 F. Supp. 3d 1000, 1013 (W.D. Wash. 2023) (holding that “a prima facie eligible TPS applicant has
21 a property interest in temporary employment authorization subject to due process protections”).
22 The Supreme Court’s order was clearly informed by the reliance interest on the part of those TPS
23 holders who *did* receive such TPS-related documentation.

24 B. Likelihood of Irreparable Harm/Balance of Equities/Public Interest

25 The reliance interest of TPS holders who did receive documentation based on the October
26 2, 2026, date also factors into the likelihood of irreparable harm. Those who received
27 documentation based on that date are especially likely to suffer irreparable injury because they
28 relied on that documentation to make plans to stay in the United States through October 2, 2026.

Plaintiff Freddy Jose Arape Rivas is one such example. As explained in his declaration submitted in conjunction with Plaintiffs' motion to postpone:

On January 17, 2025, the government announced the extension of TPS for Venezuela, and that same day I submitted my renewal application. I received a receipt that confirmed my work authorization was automatically extended for 540 days, which I submitted to my employers so that I could continue working for my employer. With that reassurance, I renewed my lease on my home.

Docket No. 18 (Rivas Decl. ¶ 12). TPS holders like Mr. Rivas, of course, also face irreparable injury without relief for the same reasons discussed in the Court's postponement order. *See* Docket No. 93 (Order at 31-39) (discussing how, absent relief, TPS holders will lose legal status which means not only loss of, *e.g.*, driver's licenses and educational opportunities, but also the prospect of removal from the United States).

The public interest also weighs in favor of relief, first for the reasons discussed in the Court's postponement order. *See* Docket No. 93 (Order at 38-41) (discussing, *e.g.*, economic contributions that Venezuelan TPS holders make to the United States). In addition, as Plaintiffs underscored at the hearing on the instant motion to preserve, the public interest weighs in favor of relief because it is not simply TPS holders who have relied on the documentation issued based on the October 2, 2026, extension date. Third parties have also relied on such documentation, including employers of TPS holders and local and state agencies. *See* Reply at 2 (noting that "[e]mployers are *required* to accept as proof of work authorization both unexpired Employment Authorization Documents (EADs) and facially expired EADs accompanied by Form I-797 receipt notices automatically extending those EADs"; adding that "[m]any state agencies also rely on Forms I-797 and Notices of Action to determine an individual's immigration status") (emphasis in original).

Finally, the government's claimed injury if the Court were to grant relief is not compelling for the reasons stated in the Court's postponement order. The Court also notes that the relief here would not extend to all Venezuelan TPS holders but rather a discrete subset – somewhere in the neighborhood of 5,000 individuals in the government's estimation. This smaller number cuts against any contention that the continued presence of these TPS holders who were granted TPS-

1 related documents by the Secretary would be a toll on the national or local economies or a threat to
2 national security.

3 C. TPS Holders Entitled to Relief

4 For the foregoing reasons, the Court concludes that Plaintiffs' motion to preserve has
5 merit. The only issue remaining is which Venezuelan TPS holders are entitled to relief. As
6 discussed at the hearing, the parties had two disagreements related to scope.

7 First, Plaintiffs argued that relief should be given to not only those TPS holders who
8 received documentation concretely reflecting final approval of legal status or work authorization
9 through October 2, 2026 (*e.g.*, I-94s)⁴ but also documentation issued to TPS holders because of the
10 extension, even if it did not explicitly bear the October 2, 2026, date or was not a formal final
11 approval document (*e.g.*, EADs, some I-797s). Mot. at 4 n.2. The Court agrees with Plaintiffs
12 that such TPS holders are entitled to relief. The Supreme Court's order referencing the October 2,
13 2026, date appears to modify only I-94s which generally bear an expiration date; other documents
14 listed in the order such as EADs typically do not bear an express expiration date. And this is
15 consistent with a grammatical construction of the sentence since the October 2, 2026, date is
16 linguistically proximate to the last item listed – I-94s. Moreover, such construction safeguards
17 the reliance interests of document holders; all holders of TPS documents issued pursuant to the
18 Mayorkas extension share the same reliance interest.

19 Second, Plaintiffs argued that TPS holders should be given relief so long as they were
20 issued and/or received documentation up through the date of the Supreme Court's order of May
21 19, 2025. Plaintiffs explained that, even though the Secretary vacated the extension on February
22 3, 2025, and then terminated the 2023 TPS Designation for Venezuela on February 5, 2025, this
23 Court postponed that agency action on March 31, 2025. No termination was effective during the
24 pendency of this Court's postponement order. Plaintiffs contend that, because of the
25 postponement order, DHS continued to process applications seeking the benefit of the October 2,
26 2026, date until the Supreme Court stayed the postponement order on May 19, 2025, allowing
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28 ⁴ At the hearing, the government indicated that there were about 5,000 such TPS holders.

Secretary Noem’s vacatur and termination to go into effect. In the alternative, Plaintiffs suggested that the “cut-off” date should be April 7, 2025, which is the date that the 2023 TPS Designation was formally terminated based on the express terms of Secretary Noem’s February 5 termination notice and the operation of § 1254a(b)(3)(B).

Plaintiffs’ proposed cut-off date of April 7, 2025, is problematic. April 7 is the date that the 2023 TPS Designation was terminated pursuant to the terms of Secretary Noem’s February 5 termination notice and the operation of § 1254a(b)(3)(B) (termination may be effective no earlier than 60 days after publication of notice). But § 1254a(d)(3) keys protection of TPS-related documents to the “effective date of the *publication of the notice* of the determination [*i.e.*, termination]” 8 U.S.C. § 1254a(d)(3) (emphasis added), not “effective date of termination.” The statute provides:

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed **after the effective date of the publication of notice of the determination** under that subsection (or, at the Attorney General’s option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

8 U.S.C. § 1254a(d)(3) (emphasis added). The statute could have stated that a “termination shall only apply to documentation . . . issued . . . after the effective date of the termination,” but it did not, referring instead to the “effective date of the publication of notice.” Moreover, it may be argued that any reliance interest is diminished upon publication of a notice of termination. A TPS beneficiary who received documentation after such termination notice arguably has a diminished reliance and expectancy interest in any such documentation which purports to extend benefits beyond that date of the stated termination.⁵

⁵ Although the Court thus rejects Plaintiffs’ alternative cut-off date, it acknowledges that there is arguably some ambiguity in the statute. Section 1254a(d)(3) could have stated that a “termination shall only apply to documentation . . . issued after the date of the publication of notice,” but it did not, referring instead to the “*effective* date of the publication of notice.” 8 U.S.C. § 1254a(d)(3) (emphasis added). The use of the word “effective” could suggest that Congress meant to tie the reliance interest to the effective date of termination as set forth in 8 U.S.C. § 1254a(b)(3)(B) (providing that a termination of a TPS designation shall be published in the Federal Register and that “[s]uch termination is effective in accordance with subsection (d)(3), but shall not be effective

The Court also rejects Plaintiffs' position that the cut-off date should be May 19, 2025, the date this Court's postponement order was stayed by the Supreme Court. That date is not moored to 8 U.S.C. § 1254a(d)(3) or any other statutory provision. Moreover, with respect to reliance interests, those who received documentation because of this Court's postponement order do not have the same kind of reliance interest based on what would appear to be lawful actions of the Secretary. The Court's order was vigorously contested and was subject to appeal and potential stay, which, of course, ultimately materialized with the Supreme Court's order.

As to what *is* the appropriate cut-off date, § 1254a(d)(3) provides guidance, as indicated above. Specifically, § 1254a(d)(3) effectively vindicates reliance interests up to "the effective date of the publication of notice of the determination." 8 U.S.C. § 1254a(d)(3). That determination is the termination of a TPS designation. Here, although Secretary Noem was without authority to invalidate on February 3, 2025, TPS-related documentation already issued, she did have the authority to prospectively invalidate such documentation once she published notice that the TPS designation was being terminated consistent with § 1254a(b)(3)(B). That date is February 5, 2025 (*i.e.*, two days after the vacatur decision) when she published the notice of termination.⁶

Thus, the Court grants relief to those Venezuelan TPS holders who received TPS-related documentation based on the Mayorkas extension anytime up to and including February 5, 2025 – when the Secretary published notice that the 2023 TPS Designation was being terminated.⁷

earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C)"). Notably, Section 1254a(d)(3) does refer to § 1254a(b)(3)(B).

⁶ Technically, the vacatur decision in and of itself did not terminate the 2023 TPS Designation. It simply *enabled* Secretary Noem to terminate the designation in April 2025 – *i.e.*, because she vacated the extension that Secretary Mayorkas had given to October 2, 2026, she was then able to terminate the designation in April 2025 rather than waiting for October 2, 2026, to act.

⁷ The Court notes that, although there is a two-month difference between February 5 (the date of the publication of termination) and April 7 (the date of the actual termination), there does not seem to be much difference between the two dates as a practical matter. The Court did not grant any relief to Plaintiffs until it issued its postponement order on March 31. It seems unlikely that any documentation was issued to TPS holders between February 5 (when the termination was announced) and March 31 (when that act was postponed). At most, there is a small window – between March 31 and April 7 – where documentation could have been issued using the Mayorkas

1 **III. CONCLUSION**


2 For the foregoing reasons, the Court grants in part and denies in part Plaintiffs' motion to
 3 preserve. The motion is largely granted. It is denied only to the extent the Court has narrowed the
 4 scope of the TPS holders who are entitled to relief (*i.e.*, those who received TPS-related
 5 documentation based on the October 2, 2026, date up through February 5, 2025).

6 Accordingly, the Court orders that, to preserve the status and rights of those TPS holders
 7 described above – who received EADs, Forms I-797, Notices of Action, and Forms I-94 issued
 8 with October 2, 2026 expiration dates pursuant to the January 17, 2025, extension of TPS for
 9 Venezuela, as referenced in the Supreme Court's order on May 19, 2025 – the effective date of the
 10 portion of the Secretary's vacatur decision purporting to invalidate those documents is postponed
 11 pending resolution of this case on the merits.

12 This order disposes of Docket No. 144.

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 14 **IT IS SO ORDERED.**

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 16 Dated: May 30, 2025

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 19 EDWARD M. CHEN
 20 United States District Judge

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 extension date because of the Court's postponement order.